REMARKS/DISCUSSION:

This Amendment A is being filed within three months after the shortened statutory period for response that ended on November 25, 2006. Accordingly, a Petition for a Three-Month Extension of Time is made a part of the transmittal filed herewith.

By this Amendment A, claims 1-22 remain in this application. Independent claims 1, 17 and 19 have been amended and now recite "request generated by a controller of the conscious sedation system for a baseline response" (claim 19). Support for these amendments is given throughout; see, for example, paragraphs 78, 84, 159, 161 and 162.

Amendment and/or cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 1-9 and 17-20 stand rejected as being unpatentable over Hickle, USP no. 6,807,965 in view of Harvie, USP Pub. No. 2003/0189492. Independent claims 1, 17 and 19 have been amended as noted above.

Under MPEP 2143, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some teaching suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the

knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

In view of the foregoing requirements for a *prima facie* case of obviousness, Applicant submits that the combined art of record fails to render the claims obvious. In particular, Applicant notes that the combination of references fails to teach or suggest all of the limitations of each independent claim in accordance with MPEP 2143.03. Neither Hickle nor Harvie, alone or in combination disclose first establishing a baseline response from a patient in order to determine a level of consciousness.

Beyond the foregoing shortcomings with respect to the rejections of the independent claims, Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty and non-obviousness. For example, claim 8 recites "the controller at least ***compares responses*** of the patient to tactile requests from the first and second vibrators in determining the level of sedation of the patient." Neither Hickle nor Harvie, alone or in combination disclose comparing responses from first and second vibrators to determine the level of sedation of a patient.

While Applicant has noted several distinctions over the art of record, Applicant notes that several other distinctions exist, and Applicant preserves all rights and arguments with respect to such distinctions.

Conclusion

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. 103 have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-5028NP/VEK.

Respectfully submitted,

/Verne E. Kreger, Jr., Reg. #35231/
Verne E. Kreger, Jr.

Verne E. Kreger, Jr.
Attorney for the Applicant(s)
Reg. No. 35,231

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
513 337-3295
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